

2009 DRAFTING REQUEST

Bill

Received: **01/19/2009**

Received By: **gmalaise**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget**

By/Representing: **Weidner**

This file may be shown to any legislator: **NO**

Drafter: **gmalaise**

May Contact:

Addl. Drafters:

Subject: **Employ Priv - worker's comp**

Extra Copies:

Submit via email: **NO**

Pre Topic:

DOA:.....Weidner, BB0484 -

Topic:

Claims handling for work injury supplemental benefit fund

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	gmalaise 01/19/2009	jdye 01/20/2009		_____			State
/1			mduchek 01/20/2009	_____	lparisi 01/20/2009		

FE Sent For:

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2007-09 Budget Bill Statutory Language Drafting Request

- Topic: Claims Handling for the Work Injury Supplemental Benefit Fund
- Tracking Code: BB0484
- SBO team: General Government and Economic Development
- SBO analyst: Jenna Weidner
 - Phone: x 6-7329
 - Email: jenna.weidner@wisconsin.gov
- Agency acronym: DWD
- Agency number: 445
- Priority (Low, Medium, High): High

Intent: To provide a choice to the Department of Workforce Development (DWD) in its selection of a Work Injury Supplemental Benefit Fund (WISBF) claims handler to include not only the Department of Justice (DOJ), but also the Department of Administration – Risk Management and/or an insurance service organization.

Currently s. 102.64(2), Wis. Stats., provides that the Department of Justice (DOJ) shall represent the interests of the state in proceedings under ss. 102.49, 102.59, 102.60 and 102.66 (protects the WISBF Fund). These cases involve payments into and out of the Work Injury Supplemental Benefit Fund. By statute, only the DOJ can process WISBF claims.

Currently WC pays for a 1.00 FTE resolution officer at DOJ to process WISBF claims. DOJ has indicated that the workload may require up to 1.50 FTE in the future. DOJ, over the last year or two, has experienced some staffing related workload issues.

Internally there have been discussions suggesting that the department should have more options and flexibility regarding how WISBF claims should be handled beyond the statutorily prescribed DOJ, i.e., retaining the Department of Administration – Risk Management or an insurance service organization. Broadening WC's options in its choice of a WISBF claims handler may make WSIBF claims processing more economical and efficient.

**Department of Workforce Development
2009-2011 Biennial Budget
Worker's Compensation Division
Claims Handling for the Work Injury Supplemental Benefit Fund**

Division: Worker's Compensation

Bureau: Claims Management

Program Name(s): Work Injury Supplemental Benefit Fund

Appropriation(s) Affected: s. 20.445(1)(t), numeric 178

Issue

How can the department best administer payments into and out of the Work Injury Supplemental Benefit Fund (WISBF)?

Background/Overview

The Work Injury Supplemental Benefit Fund (Statutory Fund 226) is used to pay: (a) supplemental benefits to employees with permanent total disability, (b) death benefits to dependent children, (c) claims with at least 200 weeks of disability, and (d) certain barred claims. The revenues to support the Fund payments come from insurers and self-insured employers per the following sources and amounts: (a) \$20,000 if a work injury results in death, (b) \$20,000 for the total impairment or loss of a hand, arm, leg, or eye, (c) the death benefit when there are no dependents and (d) double or treble the amount payable for an injury or death involving a minor who is illegally employed. In addition, insurers and self-insured employers that fail to keep certain records or file certain reports pay surcharges into the Fund.

Currently s. 102.64(2), Wis. Stats., provides that the Department of Justice (DOJ) shall represent the interests of the state in proceedings under ss. 102.49, 102.59, 102.60 and 102.66 (protects the WISBF Fund). These cases involve payments into and out of the Work Injury Supplemental Benefit Fund. By statute, only the DOJ can process WISBF claims. Currently WC pays for a 1.00 FTE resolution officer at DOJ to process WISBF claims. DOJ has indicated that the workload may require up to 1.50 FTE in the future. DOJ, over the last year or two, has experienced some staffing related workload issues. Internally there have been discussions suggesting that the department should have more options and flexibility regarding how WISBF claims should be handled beyond the statutorily prescribed DOJ, i.e., retaining the Department of Administration – Risk Management or an insurance service organization. Broadening WC's options in its choice of a WISBF claims handler may make WISBF claims processing more economical and efficient.

Analysis/Alternatives

As stated above, by statute the DOJ represents the interests of the state in proceedings involving payments into and out of the Work Injury Supplemental Benefit Fund (WISBF). When the Department receives a request for a hearing involving the WISBF, the Worker's Compensation Division (WC) of the Department serves these requests to DOJ for processing, i.e., files answers, negotiates settlements, schedules an attorney general

if a hearing is held, and is responsible for collecting the assessments for death and dismemberment claims.

Over the last year or two DOJ has experienced workload issues involving claims against the Fund. Most of DOJ's workload issues are due to staff turnover/inexperience. Due to this staff turnover it has been difficult for DOJ to fairly and effectively handle the volume of WISBF claims. Currently Justice's workload consists of approximately 600 WISBF claims. In the past, the DOJ has used approximately 1.00 FTE (Resolution Officer) to perform the functions related to these claims. However, most recently the department has been informed that the WISBF workload now dictates that DOJ will need 1.50 FTE (Resolution Officer) to perform the work.

In the 2007-09 Biennial Budget, the department requested and received the supplies & services budget authority (Appropriation 169 – WC Operations) to pay for the 1.00 FTE, (Resolution Officer) at DOJ. However, the Department lacks sufficient budget authority for the additional 0.50 FTE Resolution Officer. The WISBF workload involves a Resolution Officer and an Assistant Attorney General. (An Assistant Attorney General is scheduled when a hearing is requested to protect the Fund). DOJ charges the Department for the Resolution Officer only and not for the Assistant Attorney General's time.

The cost of an additional 0.50 FTE Resolution Officer would require approximately the following additional supplies & services authority:

Item	Cost	
	1st Year	2nd Year
Supplies and Services (for DOJ 0.50 FTE Resolution Officer)	\$ 37,700	\$ 38,400

Internally there have been discussions that the department should have other options for designating who will handle WISBF claims. Some possibilities include retaining the Department of Administration – Risk Management area or an insurance service organization. Broadening WC's options in its choice of a WISBF claims handler may make WISBF claims processing more economical and efficient. Wis. Stat. 102.64(2) would need to be amended to allow the Department a choice of claims managers for the processing of WISBF fund claims since currently by statute only the DOJ can process WISBF claims.

Alternatives include:

1. Continue to keep funding the Resolution Officer position at DOJ at necessary levels and make no statutory change to allow the Department to retain other service organizations. Leave DOJ as the sole provider and processor of WISBF claims. Request sufficient supplies and services funding to pay DOJ for the additional 0.50 FTE resolution officer position.

WC has the expenditure authority to pay for the 1.00 FTE resolution officer at the Department of Justice. DOJ's workload issue due to staff turnover and inexperience may be a short term issue rather than long term. It may be possible that WC division staff could provide some further guidance, technical assistance

or hands on training to DOJ staff to bring them up to speed in their processing of WISBF claims. WC would need to request the additional supplies & services authority in its Appropriation 169 – WC Operations Appropriation for the added 0.50 FTE. There are no guarantees that another service provider/handler of WISBF claims would be more economical or efficient in handling claims than the DOJ, and inexperience and training issues in the short run would also be an issue for a new provider.

2. Allow the department (Worker's Compensation Division) to process WISBF claims and only have DOJ represent the Fund with an Assistant Attorney General in those instances when a hearing is scheduled.

The processing of WISBF claims by the Worker's Compensation Division can be construed as a conflict of interest since WC is the regulatory agency responsible to resolve WC disputes, i.e., a conflict of interest could be created if these cases were prepared for litigation by staff from the WC division. For example, If WC also had the responsibility to protect the Fund, which responsibility would take precedence; protect the Fund or fairly adjudicate claims? A statutory language change to Wis. Stat. 102.64(2) would be required to allow the department to process WISBF claims. In addition, WC does not have the authorized FTE (staff) level to process the WISBF claims, nor could it reallocate a vacant position to process these claims.

3. Develop a 2009-11 Biennial Budget request to change the statutory language of Wis. Stat. 102.64(2) that will provide the department with more options for the processing WISBF claims, i.e., payments into and out of the WISBF Fund by not only the Department of Justice, but also the Department of Administration – Risk Management or another insurance service organization. The department of Justice will continue to represent the WISBF with an Assistant Attorney General at hearings and in court. In addition, request the supplies & services expenditure authority to fund an additional 0.50 FTE resolution officer at DOJ.

The alternative provides the department the discretion as to what agency(s) it may choose to contract with to process WISBF claims. Broadening WC's options in its choice of a WISBF claims handler may make WISBF claims processing more economical and efficient. The Council on Worker's Compensation will review this change in accordance with Wis. Stat. 102.14(2).

Statutory Language Changes

A statutory language change to Wis. Stat. 102.64(2) would be required to stipulate that the department has a choice in its selection of a WISBF claims handler to include not only the DOJ, but also the Department of Administration – Risk Management and/or an insurance service organization.

Other Affected Interests

Residents of Wisconsin who file Work Injury Supplemental Benefit Fund claims

Department of Justice

Department of Administration – Risk Management or other insurance service organizations

Council on Worker's Compensation

Contacts

John Conway, Deputy Administrator – Worker's Compensation Division

Jim O'Malley, Legal Services Bureau Director - Worker's Compensation Division

Phil Breidel, Budget and Policy Analyst – Department of Workforce Development



State of Wisconsin
2009 - 2010 LEGISLATURE

IN 1119

LRB-1629/7

GMM:....

jld

DOA:.....Weidner, BB0484 - Claims handling for work injury supplemental benefit fund✓

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

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AN ACT ...; relating to: the budget.✓

Analysis by the Legislative Reference Bureau

EMPLOYMENT✓

Under current law, DOJ✓ is required to defend claims against the work injury supplemental benefit (WISB)✓ fund, which is a fund that is used to pay supplemental worker's compensation✓ to employees with permanent total disability,✓ additional death benefits to the children of a deceased employee, additional worker's compensation to an employee with permanent partial disability who incurs further permanent disability, and worker's compensation when an otherwise meritorious claim for occupational disease is barred by the statute of limitations,✓ when the status or existence of the employer or insurer cannot be determined, or when there is otherwise no adequate remedy.✓ DOJ is also required to prosecute claims for payment into the WISB fund against an employer when an injury results in death or in the loss or total impairment of a hand, arm, foot, leg, or eye or when a minor is injured while working without a work permit or in prohibited employment.✓ This bill permits DWD to retain DOA✓ or an insurance service organization, in addition to DOJ, to prosecute or defend claims for payment into or out of the WISB fund, except that under the bill DOJ must continue to appear on behalf of the state in administrative hearings or court proceedings on such claims.✓

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 16.865 (4) of the statutes is amended to read:

16.865 (4) Manage the state employees' worker's compensation program and the statewide self-funded programs to protect the state from losses of and damage to state property and liability and, if retained by the department of workforce development under s. 102.65 (3), prosecute or defend claims for payment out of the work injury supplemental benefit fund as provided in s. 102.65 (3).

History: 1973 c. 333; 1975 c. 81, 189, 422; 1977 c. 29; 1977 c. 196 s. 130 (3); 1979 c. 34, 221; 1981 c. 20; 1985 a. 29; 1987 a. 399; 1989 a. 125; 1991 a. 39; 1993 a. 16; 1995 a. 27; 2001 a. 16; 2003 a. 33; 2005 a. 74, 335; 2007 a. 20.

SECTION 2. 102.64 (2) of the statutes is amended to read:

102.64 (2) Upon request of the department of administration, the attorney general shall appear on behalf of the state in proceedings upon claims for compensation against the state. The Except is provided in s. 102.65 (3), the department of justice shall represent the interests of the state in proceedings under s. 102.49, 102.59, 102.60, or 102.66. The department of justice may compromise claims in those proceedings, but the compromises are subject to review by the department of workforce development. Costs incurred by the department of justice in prosecuting or defending any claim for payment into or out of the work injury supplemental benefit fund under s. 102.65, including expert witness and witness fees, but not including attorney fees or attorney travel expenses for services performed under this subsection, shall be paid from the work injury supplemental benefit fund.

History: 1975 c. 147; 1977 c. 187 s. 134; 1977 c. 195; 1979 c. 110 s. 60 (11); 1981 c. 20; 1983 a. 98; 1995 a. 27 ss. 3745g, 9130 (4); 1997 a. 3; 2007 a. 185.

SECTION 3. 102.65 (3) of the statutes is created to read:

Info ✓
in or out

(END)



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-1629/1

GMM:jld:md

DOA:.....Weidner, BB0484 - Claims handling for work injury supplemental benefit fund

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

EMPLOYMENT

Under current law, DOJ is required to defend claims against the work injury supplemental benefit (WISB) fund, which is a fund that is used to pay supplemental worker's compensation to employees with permanent total disability, additional death benefits to the children of a deceased employee, additional worker's compensation to an employee with permanent partial disability who incurs further permanent disability, and worker's compensation when an otherwise meritorious claim for occupational disease is barred by the statute of limitations, when the status or existence of the employer or insurer cannot be determined, or when there is otherwise no adequate remedy. DOJ is also required to prosecute claims for payment into the WISB fund against an employer when an injury results in death or in the loss or total impairment of a hand, arm, foot, leg, or eye or when a minor is injured while working without a work permit or in prohibited employment. This bill permits DWD to retain DOA or an insurance service organization, in addition to DOJ, to prosecute or defend claims for payment into or out of the WISB fund, except that under the bill DOJ must continue to appear on behalf of the state in administrative hearings or court proceedings on such claims.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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3 the statewide self-funded programs to protect the state from losses of and damage
4 to state property and liability and, if retained by the department of workforce
5 development under s. 102.65 (3), prosecute or defend claims for payments into or out
6 of the work injury supplemental benefit fund as provided in s. 102.65 (3).

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9 general shall appear on behalf of the state in proceedings upon claims for
10 compensation against the state. The Except is provided in s. 102.65 (3), the
11 department of justice shall represent the interests of the state in proceedings under
12 s. 102.49, 102.59, 102.60, or 102.66. The department of justice may compromise
13 claims in those proceedings, but the compromises are subject to review by the
14 department of workforce development. Costs incurred by the department of justice
15 in prosecuting or defending any claim for payment into or out of the work injury
16 supplemental benefit fund under s. 102.65, including expert witness and witness
17 fees, but not including attorney fees or attorney travel expenses for services
18 performed under this subsection, shall be paid from the work injury supplemental
19 benefit fund.

20 **SECTION 3.** 102.65 (3) of the statutes is created to read:

102.65 (3) In addition to the department of justice representing the interests of the state in proceedings under s. 102.49, 102.59, 102.60, or 102.66 as provided in s. 102.64 (2), the department of workforce development may retain the department of administration or an insurance service organization to prosecute or defend claims for payments into or out of the fund, except that the department of justice shall appear on behalf of the state in administrative hearings or court proceedings on such claims. A person retained under this subsection may compromise a claim processed by that person, but a compromise made by that person is subject to review by the department of workforce development. Costs incurred by a person retained under this subsection in prosecuting or defending any claim for payment into or out of the fund, including expert witness and witness fees, but not including attorney fees or attorney travel expenses for services performed under this subsection, shall be paid from the fund.

(END)